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IN THE

Supreme Court of the United States

October Term, 1971
No. 71-1609

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a public corporation,

Petitioner,

vs.

KENNETH L. KARST, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeal, State of California, Second Appellate District, Division Three.

RESPONDENTS' (TAXPAYERS) BRIEF IN OPPOSITION.

Question Presented.

Whether a State University can, consistent with the First and Fourteenth Amendments to the United States Constitution as well as the California Constitution, establish and maintain a conclusive presumption that no member of the Communist Party is academically qualified to teach.

Statement of the Case.

The Statement of the Case contained in the Petition for a Writ of Certiorari accurately sets forth certain of the chronology of this litigation. That chronology is amplified in the Brief in Opposition filed by respondent

Angela Y. Davis. This Brief in Opposition is presented on behalf of Respondents Karst, Kaplan, Glasgow, Moore and Deutsch, the original plaintiffs below.

The decision of the California Court of Appeal (App. A of the Petition), consistent with the clear and unambiguous decisions of this Court and of the California Supreme Court, affirmed the trial court's decision which held that the denial of public employment on the sole criteria of membership in the Communist Party impermissibly and unnecessarily infringes upon an individual's right to freedom of association, a right which is solidly imbedded in the First and Fourteenth Amendments to the United States Constitution, as well as Article I, Sections 9 and 10 of the California Constitution.[1]

Reasons for Denying the Writ.

The Writ should be denied because there is no issue presented by this case which has not been fully resolved by applicable decisions of this Court; because the decision below is in complete accord with those decisions; and because the judgment rests alternatively on an independent state ground which is beyond the purview of this Court's jurisdiction.

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[1]A hearing was sought in and denied by the California Supreme Court. That fact implies that the California Supreme Court did not believe the decision below was at odds with applicable cases or that an important question was otherwise presented. Rule 29(a)(1) of the California Rules of Court specifies, as a ground for hearing in the Supreme Court, a necessity "to secure uniformity of decision or the settlement of important questions of law". A denial of a hearing by that Court, unlike a denial of certiorari by this Court, has been said by the California Supreme Court to be not "without significance as to [its] views . . . ." *Di Genova v. Board of Education*, 57 Cal.2d 167, 178, 367 P.2d 865, 871 (1962). The weight to be accorded a denial of hearing by the California Supreme Court has, how-

ARGUMENT.

1. The Federal Question Decided by the California Court of Appeal Has Been Previously Determined Many Times by This Court; and the Opinion of the Court of Appeal Is Fully in Accord With This Court's Prior Applicable Decisions.

As reflected in the Petition itself, the Regents of the University of California (hereinafter "Petitioner") has a long established written policy of excluding from the faculty of the University of California all members of the Communist Party. Petitioner seeks to have this Court uphold that policy on the basis of a conclusive presumption, arising solely from the fact of such membership, that all members of the Party "are disqualified from serving on its faculty by *reason of lack of academic integrity or want of professional ethics.*" (Pet., pp. 6-7; italics in the original.)

In a long series of cases, this Court has decided that membership alone, in the Communist Party or any other lawful organization, can never serve as the basis for governmental imposition of disabilities or liabilities directly[2] upon an individual. *Wieman v. Updegraff*, 344 U.S. 183 (1952) [University faculty position];

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ever, been the subject of substantial argument. Kanner, *It's a Busy Court: The Effect of Denial of Hearing by the Supreme Court on Court of Appeal Decisions*, 47 CALIF. STATE BAR J. 188-193 (May-June 1972).

[2]*American Communications Ass'n. v. Douds*, 339 U.S. 382 (1950), which is virtually the sole authority relied on by Petitioner, has been distinguished on the ground, among others, that the policy basis for the statute in that case, while discouraging "unions from choosing officers with Communist affiliations . . . did not affect basic individual rights to work . . . ." *Aptheker v. Secretary of State*, 378 U.S. 500, 512 (n. 11) (1964), where the Court held that denial of a passport was a "more 'drastic'" "abridgment of liberty" than the statute in *Douds*, because the disability applied directly to the individual. *Id.* See also Note 7, *infra*, for a further discussion of *Douds*.

Aptheker v. Secretary of State, 378 U.S. 500 (1964) [revocation of passport]; *Elfbrandt v. Russell*, 384 U.S. 11 (1966) [teaching position]; *Keyishian v. Board of Regents*, 385 U.S. 589 (1967) [University faculty position]; *United States v. Robel*, 389 U.S. 258 (1967) [employment in designated "defense facilities"]; *Baird v. State Bar*, 401 U.S. 1 (1971) [admission to practice law]. See also *United States v. Brown*, 381 U.S. 437 (1965).

The concept firmly established by these and other cases is that no governmental objective, however laudatory, can constitutionally be advanced by laws or regulations based solely upon inferences to be drawn from an individual's political beliefs, convictions or affiliations. Where such basic First Amendment freedoms are involved, laws must be drawn with that degree of precision necessary to assure that the disability or liability is based upon characteristics or conduct of the individual himself. Government is simply not permitted the shortcut of presuming that every individual in a group necessarily shares what may be deemed to be the evils of the group itself—even where that group is the Communist Party.[3]

Laws which are so broad as to violate this principle have been uniformly struck down not only because of the basic unfairness to the given individual, but also

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[3]"In a number of decisions, this Court has pointed out the fallacy of the suggestion that membership in the Communist Party, or any other political organization, can be regarded as an alternative, but equivalent, expression for a list of undesirable characteristics. For, as the Court noted in *Schneiderman v. United States*, 320 U.S. 118, 136, 'under our traditions beliefs are personal and not a matter of mere association, and . . . men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles.' " *United States v. Brown*, 381 U.S. 437, 455-456 (1965).

because of the "chilling effect" that such laws would have on all who otherwise seek to exercise their fundamental right to form or join the political association of their choice.

So it is with Petitioner's Policy. The constitutional defect in that Policy is its blanket disqualification of all members of the Communist Party. "[M]ere membership in an organization can never, by itself, be sufficient ground for a State's imposition of civil disabilities . . . ." *Baird v. State Bar,* 401 U.S. 1, 9 (1971) (Stewart, J. concurring). The imposition of disabilities because of membership alone, without any added showing, is tantamount to establishing "guilt by association alone", *United States v. Robel,* 389 U.S. 258, 265 (1967); "has the potential of curtailing free expression by inhibiting persons from establishing or retaining such associations", *id.* at 270 (Brennan, J. concurring); and is "an assertion of arbitrary power", *Wieman v. Updegraff,* 344 U.S. 183, 191 (1953). Petitioner's Policy applies uniformly to all members, without further distinction of any kind. On that ground alone, the decisions of this Court compelled a declaration of its constitutional invalidity. *See also Keyishian v. Board of Regents,* 385 U.S. 589, 603 (1967); *Vogel v. County of Los Angeles,* 68 Cal.2d 18, 434 P.2d 961 (1967).

Significantly, Petitioner does not question the viability of these cases, nor does it seek to have this Court reexamine the premises underlying the "overbreadth" doctrine. Rather, Petitioner attempts to distinguish the controlling cases on the purported ground that each dealt with a presumption of "disloyalty or subversive activities", whereas Petitioner's conclusive presumption is that "members of the Communist Party are disquali-

fied from service on its faculty *by reason of lack of academic integrity or want of professional ethics.*" (Pet., pp. 6-7, italics in original.)

The distinction is unsound, as it misses the whole point of the overbreadth doctrine. Under that doctrine, it is the drawing of an adverse inference from the fact of association, rather than the specifics of the inference drawn, which constitutes the evil to be avoided.

Furthermore, the premise of the purported distinction is inaccurate. There is nothing to distinguish Petitioner's Policy from the nearly identical policy of New York's Feinberg Law, struck down by this Court in *Keyishian, supra.* There, membership in the Communist Party constituted *prima facie* evidence that an individual was unfit to teach in the State's public schools or public university system. After a general description of overbreadth principles, the *Keyishian* Court stated:

> But even the Feinberg Law provision, applicable primarily to activities of teachers, who have captive audiences of young minds, are subject to these [overbreadth] limitations in favor of freedom of expression and association; the stifling effect on the academic mind from curtailing freedom of association in such manner is manifest, and has been documented in recent studies. *Elfbrandt* [*Elfbrandt v. Russell,* 384 U.S. 11 (1966)] and *Aptheker* [*Aptheker v. Secretary of State,* 378 U.S. 500 (1964)] state the governing standard: legislation which sanctions membership unaccompanied by specific intent to further the unlawful goals of the organization *or which is not active membership* violates constitutional limitations. 385 U.S. at 607-08. (Emphasis added.)[4]

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[4]In the term which just concluded, this Court expressly reaffirmed *Keyishian* in *Perry v. Sinderman,* 40 L.W. 5087, 5089

Petitioner's Policy falls squarely within the fact situation and governing standard of *Keyishian*. It applies, as did the Feinberg Law in *Keyishian*, to teachers at a public university. It, like the Feinberg Law, sanctions membership alone without any requirement of establishing an individual's active membership or his specific intent to further the unlawful goals of the Communist Party.

Indeed, if anything, the *conclusive* presumption of the Regents' Policy is even more constitutionally defective than the Feinberg Law provision invalidated in *Keyishian*. The Feinberg Law, as interpreted by the New York courts, created only a *prima facie* presumption that a Party member was unfit to teach. 385 U.S. at 608. This *prima facie* presumption could be rebutted by certain showings of fact, which the *Keyishian* Court held to be too limited to satisfy constitutional requirements. *Id.* The Regents' Policy embodies a *conclusive* presumption from membership alone, which cannot be rebutted by any type of showing.

Not only is Petitioner's distinction of the overbreadth cases unsound, it carries if anything a greater chilling effect than the cases it seeks to distinguish. As so aptly put by the trial judge below, "this is the most terrifying proposition that has ever been argued before this court . . . ." [R.T. 43-44.] What Petitioner in effect says, in the guise of preserving freedom of inquiry, is that students must be protected from teachers whose inquiry has led them in the "wrong" direction. Given the solicitude that this Court has shown for the preservation of First Amendment freedoms in the academic

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(6-29-72), and cited it with approval in *Healy v. James*, 40 L.W. 4887, 4892 (6-26-72), and *Cole v. Richardson*, 40 L.W. 4381, 4383 (4-18-72).

community,[5] the very nature of Petitioner's purported distinction adds to the "terrifying" nature of its position.

This Court reached the result it did in *Wieman, Keyishian* and *Elfbrandt* specifically because the oaths there in question were broad enough to *include* "mere" membership in the Communist Party, the evil of which was said to be "the stifling effect on the academic mind". *Keyishian v. Board of Regents, supra,* 385 U.S. at 607. Yet it is in the name of "academic freedom" that Petitioner seeks to validate its Policy. (Pet., p. 13, *et seq.*) This brand of double-think is perhaps most clearly illustrated by the following choices of quotations cited by Petitioner in *support* of its position (Pet., pp. 13-14, 17-18):

> "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment. . . ." *Keyishian v. Board of Regents,* 385 U.S. 589, 603, quoted at Pet., p. 13.
>
> "The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation." *Sweezy v. New Hampshire,* 354 U.S. 234, 250 (1957), quoted at Pet., pp. 13-14.
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> "The process of education has naturally enough been the basis of hope for the perdurance of our

[5]The most recent example being *Healy v. James,* 40 L.W. 4887 (6-26-72), quoted at length in Respondent Davis' Brief in Opposition, pp. 21-24.

democracy on the part of all our great leaders, from Thomas Jefferson onwards.

"To regard teachers—in our entire educational system, from the primary grades to the university—as the priests of our democracy is therefore not to indulge in hyperbole. It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective public opinion. Teachers must fulfill their function by precept and practice, by the very atmosphere which they generate; they must be exemplars of open-mindedness and free inquiry. *They cannot carry out their noble task if the conditions for the practice of a responsible and critical mind are denied to them.* They must have the freedom of responsible inquiry, by thought and action, into the meaning of social and economic ideas, into the checkered history of social and economic dogma." *Wieman v. Updegraff*, 344 U.S. 183, 196 (concurring opinion of Frankfurter, J., quoted at Pet., pp. 17-18).[6]

In each of the cited opinions, the author was making the point that pursuit of truth is meaningless if the teacher is foreclosed from following that pursuit wherever it leads, even where it leads to membership in the Communist Party. Petitioner's selection of such passages to support its need for "maintaining conditions promoting academic freedom" (Pet., p. 13), by then excluding all teachers whose pursuit has gone in a given direction, is the most eloquent indictment of its position which could be developed.[7]

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[6]Italics not in the original, but added in the Petition.

[7]The Regents' reliance on *American Communications Ass'n. v. Douds*, 339 U.S. 382 (1950), does not strengthen their discredited argument. *Douds* was decided before the development

2. Alternative Methods Already Exist Which Further the Goals of Petitioner's Policy Without Infringing on Constitutional Rights.

Neither Respondents nor any of the courts below have taken issue with Petitioner's assertion that faculty fitness is a legitimate and substantial state interest. It is the method by which Petitioner has chosen to promote that interest that is at issue. As Petitioner recognizes in its Petition, p. 11, restrictions on First Amendment freedoms must be "no greater than is essential to the furtherance of that interest." *United States v. O'Brien,* 391 U.S. 367 (1968). The University already has in operation extensive mechanisms which advance the same interests which it seeks to promote through its Policy, but which do not infringe unnecessarily on constitutionally protected rights.

Both appointments to the faculty of the University and advancement to higher faculty positions are governed by officially adopted criteria, which are included herein in the Appendix. The criteria for faculty appointment and advancement, and the application procedures, protect all the interests—academic integrity, commitment to academic freedom, objective pursuit of truth in research, objectivity in teaching and compliance with professional ethics—which Petitioner seeks to insure by its policy of terminating faculty appoint-

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of the cases leading to *Keyishian.* The statute with which *Douds* was concerned (Section 9(h) of the Labor Management Relations Act of 1947) has since been repealed and its successor statute ruled unconstitutional. *United States v. Brown,* 381 U.S. 437 (1965). Mr. Justice White, dissenting in *Brown,* concluded that *Douds* "is obviously overruled", 381 U.S. at 464-65. Justices Douglas and Black subsequently agreed that *Douds* "obviously belongs to a discredited regime, though . . . it has never been officially overruled". *Bryson v. United States,* 396 U.S. 64, 76 (1969) (dissenting opinion).

ments solely on the basis of political affiliation. Yet they do not infringe unnecessarily on constitutionally protected rights.

In short, the interests Petitioner seeks to protect are already protected by constitutional means. Those interests are not doomed to extinction by a declaration that its conclusive presumption of academic unfitness from Communist Party membership alone is unconstitutional.

3. This Court Should Not Take Jurisdiction of This Case Because the Judgment Below Is Supported by an Adequate and Independent State Ground.

As a matter of state law, "all rights, actions, prosecutions, claims, and contracts of the State, counties, individuals, or bodies corporate" must comply with the California Constitution in order to be valid. California Constitution, Article XXII, §1. See *People v. Anderson*, 6 Cal.3d 628, 493 P.2d 880 (1972), *cert. denied*, May 30, 1972. Article I, Section 9 of the California Constitution states in part: "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." Article I, Section 10 of the California Constitution provides: "The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances."

The trial court in the instant case expressly held that Petitioner's Policy is

> *in violation of Article I, Sections 9 and 10, of the California Constitution*, and of the First and Fourteenth Amendments of the Constitution of the

> United States of America, because [it] automatically exclude[s] from faculty employment by the University of California, solely by virtue of such membership, any person who is a member of the Communist Party. (Pet., App. B, at xii.) (Emphasis added.)

The California Court of Appeal, in affirming the trial court judgment in its entirety, specifically quoted the above portion of the trial court order (Pet., App. A, at vi). Thus the invalidity under the California Constitution of the policy in question has been established and preserved at each level in the proceedings below.

In this case, where the state court relied upon both the California and United States Constitutions to invalidate the University's policy, it would be inappropriate for this Court to accept jurisdiction. *Jankovich v. Indiana Toll Road Commission,* 379 U.S. 487 (1965); *Lynch v. New York ex rel. Pierson,* 293 U.S. 52 (1934).

Conclusion.

There are no novel or unsettled questions of law in the instant action. *Keyishian, Elfbrandt,* and other decisions of this Court, together with the California Constitution, clearly dictated the lower court's conclusion that Petitioner's Policy of automatic exclusion of Communist Party members from its faculty cannot stand.

Respondents agree with the "great principle" cited by Petitioner (Pet., p. 17) and expounded by Mr. Justice Frankfurter, concurring in *Wieman v. Updegraff,* 344 U.S. 183, 196. Unlike Petitioner, Respondents agree also with the conclusion that Mr. Justice Frankfurter was advocating in *Wieman,* the conclusion that state-imposed disabilities should not be permitted merely

upon the affiliation of an individual with a particular organization:

> Such unwarranted inhibition upon the free spirit of teachers affects not only those who, like the appellants, are immediately before the Court. It has an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice; it makes for caution and timidity in their associations by potential teachers. 344 U.S. at 195.

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

CHARLES H. PHILLIPS,
RICHARD H. BOROW,
STEVEN L. SLOCA,
Counsel for Respondents Karst, Kaplan, Glasgow, Moore and Deutsch.

APPENDIX.

University of California, Administrative Manual, Chap. 2, § 50-1.

INSTRUCTIONS TO APPOINTMENT AND PROMOTION COMMITTEES

A. *Purpose and Responsibility of the Review Committees*

The quality of the faculty of the University of California is maintained primarily through objective and thorough appraisal, by competent faculty members, of each candidate for appointment or promotion. Responsibility for this appraisal falls largely upon the review committees nominated by the Committee on Budget and Interdepartmental Relations and appointed by the Chancellor or his designated representative. It is the duty of these committees to ascertain the present fitness of each candidate and the likelihood of his pursuing a productive career. In judging the fitness of the candidate it is appropriate to consider his professional integrity as evidenced by his performance of his duties. (A useful guide for such consideration is furnished by the Statement on Professional Ethics issued by the American Association of University Professors. A copy of this Statement is appended to these instructions for purposes of reference.) Implied in the committee's responsibility for building and maintaining a faculty of the highest excellence is also a responsibility to the candidate for just recognition and encouragement of achievement.

B. *Maintenance of the Committee's Effectiveness*

(1) THE MEMBERSHIP, DELIBERATIONS, AND RECOMMENDATIONS OF THE REVIEW COMMITTEE ARE STRICTLY CONFIDENTIAL. The chairman of an appointment or promotion committee should remind members of the committee, and others whom it is essential for the committee to consult, of the confidential nature of the assignment. This should be kept in mind for arranging for all written or oral communications; and when recommendations with supporting documents have been forwarded, all copies or preliminary drafts should be destroyed.

(2) The whole system of review by appointment and promotion committees depends for its effectiveness upon each committee's prompt attention to its assignment and its conduct of the review with all possible dispatch, consistent with judicious and thorough consideration of the case.

(3) The Chairman of the review committee has the responsibility of making sure that each member of the committee has read and understands these instructions.

C. *Procedure*

(1) *General*—Recommendations for appointments and promotions normally originate with the Department Chairman. His letter of recommendation should provide a comprehensive assessment of the candidate's qualifications together with detailed evidence to support this evalua-

tion. The letter should also present a report of the Department Chairman's consultation with the members of his Department, including any dissenting opinions. In addition to his letter of recommendation, the Department Chairman is expected to assemble and submit to the Chancellor an up-to-date biography and bibliography, together with copies of research publications or other scholarly or creative work.

(2) *Appointments*—The Department Chairman should include in his documentation opinions from colleagues in other institutions where the nominee has served and from other qualified persons having firsthand knowledge of the nominee's attainments. Extramural opinions are imperative in the case of proposed appointments to tenure status of persons from outside the University.

(3) *Promotions*—Promotions are based on merit; they are not automatic. Achievement, as it is demonstrated, should be rewarded by promotion. Promotions to tenure positions should be based on consideration of comparable work in a man's own field or in closely related fields. The Department and the review committee should consider how the candidate stands in relation to other people in his field outside the University who might be considered alternative candidates for the position. It is also recommended that the Department Chairman supplement the opinions of his colleagues within the Department by letters from distinguished extramural informants.

(4) *Assessment of Evidence*—The review committee shall assess the adequacy of the evidence submitted. If in the committee's judgment the evidence is insufficient to reach a clear recommendation, the committee chairman, through the Chancellor, shall request amplification. In every case all obtainable evidence shall be carefully considered.

If, according to all obtainable evidence, the candidate fails to meet the criteria set forth in Section d. below, the committee should recommend against appointment or promotion. If, on the other hand, there is evidence of unusual achievement, and exceptional promise of continued growth the committee should not hesitate to endorse a recommendation for accelerated advancement.

D. *Criteria for Appointment and Promotion*

The review committee shall judge the candidate with respect to the proposed rank and duties, considering the record of his performance in (a) teaching, (b) research or other creative work, (c) professional activity, and (d) university and public service. In evaluating the candidate's qualifications within these areas, the review committee shall exercise reasonable flexibility, balancing, where the case requires, heavier commitments and responsibilities in one area against lighter commitments and responsibilities in another. The review committee must judge whether the candidate is engaging in a program of work that is both sound and productive. As the University enters new fields of endeavor and refocuses its ongoing activities, cases will arise in which the proper work of faculty members departs markedly from established academic patterns. In

such cases the review committees must take exceptional care to apply the criteria with sufficient flexibility. However, flexibility does not entail a relaxation of high standards. Superior intellectual attainment, as evidenced both in teaching and in research or other creative achievement, is an indispensable qualification for appointment or promotion to tenure positions. Insistence upon this standard for holders of the professorship is necessary for maintenance of the quality of the University as an institution dedicated to the discovery and transmission of knowledge.

The criteria set forth below are intended to serve as a guide in judging the candidate, not to set boundaries to the elements of performance that may be considered.

(1) *Teaching*—Effective teaching is an essential criterion to appointment or advancement. Under no circumstances will a tenure commitment be made unless there is clear documentation of ability and diligence in the teaching role. In judging the effectiveness of a candidate's teaching, the committee should consider such points as the following: the candidate's command of his subject; his continuous growth in his field; his ability to organize his material and to present it with force and logic; his capacity to awaken in students an awareness of the relationship of his subject to other fields of knowledge; his grasp of general objectives; the spirit and enthusiasm which vitalize his learning and teaching; his ability to arouse curiosity in beginning students and to stimulate advanced students to creative work; his personal attributes as

they affect his teaching and his students; the extent and skill of his participation in the general guidance and advising of students. The committee should pay due attention to the variety of demands placed on instructors by the types of teaching called for in various disciplines and at various levels, and should judge the total performance of the candidate with proper reference to his assigned teaching responsibilities. The committee should clearly indicate the sources of evidence on which its appraisal of teaching competence has been based. In those exceptional cases where no such evidence is available, the candidate's potentialities as a teacher may be indicated in closely analogous activities.

It is the responsibility of the Department Chairman to submit meaningful statements, accompanied by evidence, including evaluations of the candidate solicited from students, concerning the candidate's teaching effectiveness at lower-division, upper-division, and graduate levels of instruction. If such information is not included in the letter of recommendation, it is the review committee chairman's responsibility to request it, through the Chancellor.

No single set of satisfactory criteria can be prescribed; however, among significant types of evidence of teaching effectiveness are the following: (1) Opinions of other members of the candidate's Department, particularly if based on class visitations, on attendance at public lectures or lectures before professional societies given by the candidate, or on the candidate's results in courses prerequisite to those of the in-

formant. (2) Opinions of students. (3) Opinions of graduates who have achieved notable professional success since leaving the University. (4) Number and caliber of students guided in research by the candidate and of those attracted to the campus by his repute as a leader. (5) Development of new and effective techniques of instruction.

(2) *Research and Creative Work*—Evidence of a productive and creative mind should be sought in the candidates published research or recognized artistic production in original architectural or engineering designs, or the like.

Publications in research and other creative accomplishment should be evaluated, not merely enumerated. There should be evidence that the candidate is continuously and effectively engaged in creative activity of high quality and significance. Work in progress should be assessed whenever possible. When published work in joint authorship (or other product of joint effort) is presented as evidence it is the responsibility of the Department Chairman to establish as clearly as possible the role of the candidate in the joint effort. It should be recognized that special cases of collaboration occur in the performing arts and that the contribution of a particular collaborator may not be readily discernible as his by those viewing the finished work. When the candidate is such a collaborator it is the responsibility of the Department Chairman to make a separate evaluation of the candidate's contribution and to provide outside opinions based on observation of the work while in prog-

ress. Account should be taken of the type and quality of creative activity normally expected in the candidate's field. Appraisals of publications or other works in the scholarly and critical literature provide important testimony. Textbooks, reports, circulars, and similar publications normally considered evidence of teaching ability or public service, or contributions by candidates in the professional school faculties to the professional literature, the advancement of professional practice or of professional education, should be judged creative work when they present new ideas or incorporate scholarly research.

In certain fields such as art, architecture, dance, music, literature, and drama, distinguished creation should receive consideration equivalent to that accorded to distinction attained in research. In evaluating artistic creativity, an attempt should be made to define the candidate's merit in the light of such criteria as originality, scope, richness, and depth of creative expression. It should be recognized that in music, drama, and dance, distinguished performance, including conducting and directing, is evidence of a candidate's creativity.

(3) *Professional Competence and Activity*—In certain positions in the professional schools and colleges, such as architecture, business administration, dentistry, engineering, law, medicine, etc., a demonstrated distinction in the special competences appropriate to the field and its characteristic activities should be recognized as a criterion for appointment or promotion. The

candidate's professional activities should be scrutinized for evidence of achievement and leadership in the field and of demonstrated progressiveness in the development or utilization of new approaches and techniques for the solution of professional problems. It is the responsibility of the Department Chairman to provide evidence that the position in question is of the type described above and that the candidate is qualified to fill it.

(4) *University and Public Service*—The faculty plays an important role in the administration of the University and in the formulation of its policies. Recognition should therefore be given to scholars who prove themselves to be able administrators and who participate effectively and imaginatively in faculty government and the formulation of departmental, college, and University policies. Services by members of the faculty to the community, state, and nation, both in their special capacities as scholars and in areas beyond those special capacities when the work done is at a sufficiently high level and of sufficiently high quality, should likewise be recognized as evidence for promotion. Similarly, contributions to student welfare through service on student-faculty committees and as adviser to student organizations should be recognized as evidence.

E. *The Report*

(1) The report of the review committee forms the basis for further review by the Budget Committee and for action by the Chancellor and by the President. Consequently, it should include

an appraisal of all significant evidence favorable and unfavorable. It should be specific and analytical and should include the review committee's evaluation of the candidate with respect to each of the qualifications specified above. It should be adequately documented by reference to the supporting material.

(2) The review committee has the responsibility of making an unequivocal recommendation. No member should subscribe to the report if it does not represent his judgment. If the committee cannot come to a unanimous decision, the division of the committee and the reason therefor should be communicated either in the body of the report or in separate concurring or dissenting statements by individual members, submitted with the main report and with the cognizance of the other committee members.

Appended for reference on the following pages is the AAUP Statement on Professional Ethics referred to in the first section of these instructions.

American Association of
University Professors Bulletin
Vol. 52, p. 290-291, 1966
(Reprinted) Vol. 55, p. 86-87, 1969
Statement on Professional Ethics
(Endorsed by the
Fifty-Second Annual Meeting)

The Statement

I. The professor, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognizes the special responsibilities placed upon him. His primary responsibility to his subject is to seek

and to state the truth as he sees it. To this end he devotes his energies to developing and improving his scholarly competence. He accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. He practices intellectual honesty. Although he may follow subsidiary interests, these interests must never seriously hamper or compromise his freedom of inquiry.

II. As a teacher, the professor encourages the free pursuit of learning in his students. He holds before them the best scholarly standards of his discipline. He demonstrates respect for the student as an individual, and adheres to his proper role as intellectual guide and counselor. He makes every reasonable effort to foster honest academic conduct and to assure that his evaluation of students reflects their true merit. He respects the confidential nature of the relationship between professor and student. He avoids any exploitation of students for his private advantage and acknowledges significant assistance from them. He protects their academic freedom.

III. As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas shows due respect for the opinions of others. He acknowledges his academic debts and strives to be objective in his professional judgment of colleagues. He accepts his share of faculty responsibilities for the governance of his institution.

IV. As a member of his institution, the professor seeks above all to be an effective teacher and scholar. Although he observes the stated regulations of the institution, provided they do not contravene academic

freedom, he maintains his right to criticize and seek revision. He determines the amount and character of the work he does outside his institution with the due regard to his paramount responsibilities within it. When considering the interruption or termination of his service, he recognizes the effect of his decision upon the program of the institution and gives due notice of his intentions.

V. As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.